

Virginia Department of Environmental Quality (DEQ) Storage Tank Program Fact Sheet: Liability for Petroleum Cleanups and Access to VPSTF following Property Transfers

This fact sheet pertains to situations in which an individual or entity purchases real property on which a petroleum release was reported before the transfer of ownership.

● Regulated Underground Storage Tanks (USTs)

- Under State Water Control Law¹, owners and operators of leaking USTs are responsible for cleaning up petroleum releases. The law also states that the UST owner or operator at the time the release is reported to DEQ will be deemed to be the responsible person (RP) for the cleanup of the release. The RP is required to continue the cleanup until DEQ closes the case, whether the property remains in the RP's possession or is transferred to another party. If the property is transferred to another party, the RP should obtain a site access agreement to ensure the ability to complete the cleanup after the sale of the property.
- For release reports occurring before the property is sold, a subsequent purchaser would be neither the owner nor operator of the USTs at the time the release was reported to DEQ. Therefore, the subsequent purchaser would not be the RP for occurrences reported before the transfer of real property ownership.
- Closure of a remediation case does not mean that the property is free of contamination. Most remediation cases are closed with contamination remaining on the property. In such cases, subsequent purchasers who develop or alter the property are responsible for properly managing contaminated media and addressing environmental impacts resulting from development activities. This includes disposal of petroleum contaminated soils generated by construction activities and disposal of contaminated water generated by dewatering activities².
- Whether a purchaser of real estate is responsible for releases reported after the sale depends on whether the sale included the USTs that are the source of a new release report³.
- If it is the intention of the parties to transfer UST ownership, then the seller should obtain a registration form (Form 7530) from the new owner and submit it to DEQ. If it is the intention of the parties for tank ownership to remain with the seller, then the buyer should ensure that the tanks are registered in the seller's name with DEQ.

¹ Virginia Code Section 62.1-44.34:9.

² If a previously issued pollution complaint occurrence is reopened for other reasons, the original RP(s) will remain responsible for required response activities.

³ USTs that are not registered with DEQ usually convey with the real property, unless the real property owner demonstrates that the USTs were either (i) conveyed as personal property to another party, or (ii) were last used before November 8, 1984 by a previous property owner. For registered USTs, DEQ usually relies on the registration form to determine UST ownership, unless the registered owner demonstrates that the USTs were conveyed as personal property to another party, or were *specifically identified* in a deed conveying the real property to another party.

- **Unregulated USTs, Aboveground Storage Tanks (ASTs), and Other Discharges**

- State Water Control Law Article 11⁴ places responsibility for cleaning up oil discharges that occur from any source other than a regulated UST (referred to herein as Article 11 occurrences) on (1) any person causing or permitting a discharge (“spiller”) and (2) any operator of any facility where a discharge occurs. This includes discharges from unregulated USTs such as heating oil tanks and ASTs. Operators include persons who own, operate, charter, rent or exercise control over a facility or a vehicle or vessel. Thus, the law places liability for Article 11 occurrences on: (1) the person who causes a discharge; (2) the operator of a tank from which a discharge occurs; (3) the owner of a tank from which a discharge occurs; and (4) the owner of the real property where the discharge occurs, among others⁵. The spiller or operator DEQ has identified as liable for the occurrence must continue the cleanup until DEQ closes the case. If the spiller or operator is the real property owner, it must continue the cleanup even if the real property is transferred to another party. In those circumstances, the spiller/operator should obtain a site access agreement to ensure the ability to complete the cleanup after the sale of the property.
- For discharges reported before the property is sold, DEQ typically does not pursue a subsequent real property purchaser. However, if acts or omissions of the subsequent purchaser interfere with cleanup activity (e.g., barring site access), DEQ may hold the subsequent purchaser liable for cleanup.
- Closure of a cleanup case does not mean that the property is free of contamination. Most cleanup cases are closed with contamination remaining on the property. In such cases, subsequent purchasers who develop or alter the property are responsible for properly managing contaminated media and addressing environmental impacts resulting from development activities. This includes disposal of petroleum contaminated soils generated by construction activities and disposal of contaminated water generated by dewatering activities⁶.
- If it is the intention of the parties to transfer AST ownership, then the seller should obtain a registration form (Form 7540) from the new owner and submit it to DEQ for any ASTs greater than 660 gallons. If it is the intention of the parties for tank ownership to remain with the seller, then the buyer should ensure that any ASTs greater than 660 gallons are registered in the seller’s name with DEQ.

- **Reimbursement from the Virginia Petroleum Storage Tank Fund (VPSTF)**

Some buyers wish to complete the cleanup that the seller has initiated. For cleanups in which the seller is eligible to submit for reimbursement from the Virginia Petroleum Storage Tank Fund (VPSTF), the seller may: (1) assign its reimbursement to the buyer (requires an assignment with each progress claim), or (2) relinquish its VPSTF access to the buyer (requires the buyer to submit to DEQ an assumption of liability for the entire cleanup). The Assumption of Liability fact sheet contains additional information on this process.

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⁴ Virginia Code Section 62.1-44.34:14 *et seq.*

⁵ Where there are multiple operators in existence for an AST, DEQ normally pursues operators in the order listed here.

⁶ If a previously issued pollution complaint occurrence is reopened for other reasons, the original spiller/operator(s) will remain responsible for required response activities.